TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 189.

LEE LUNG, APPELLANT,

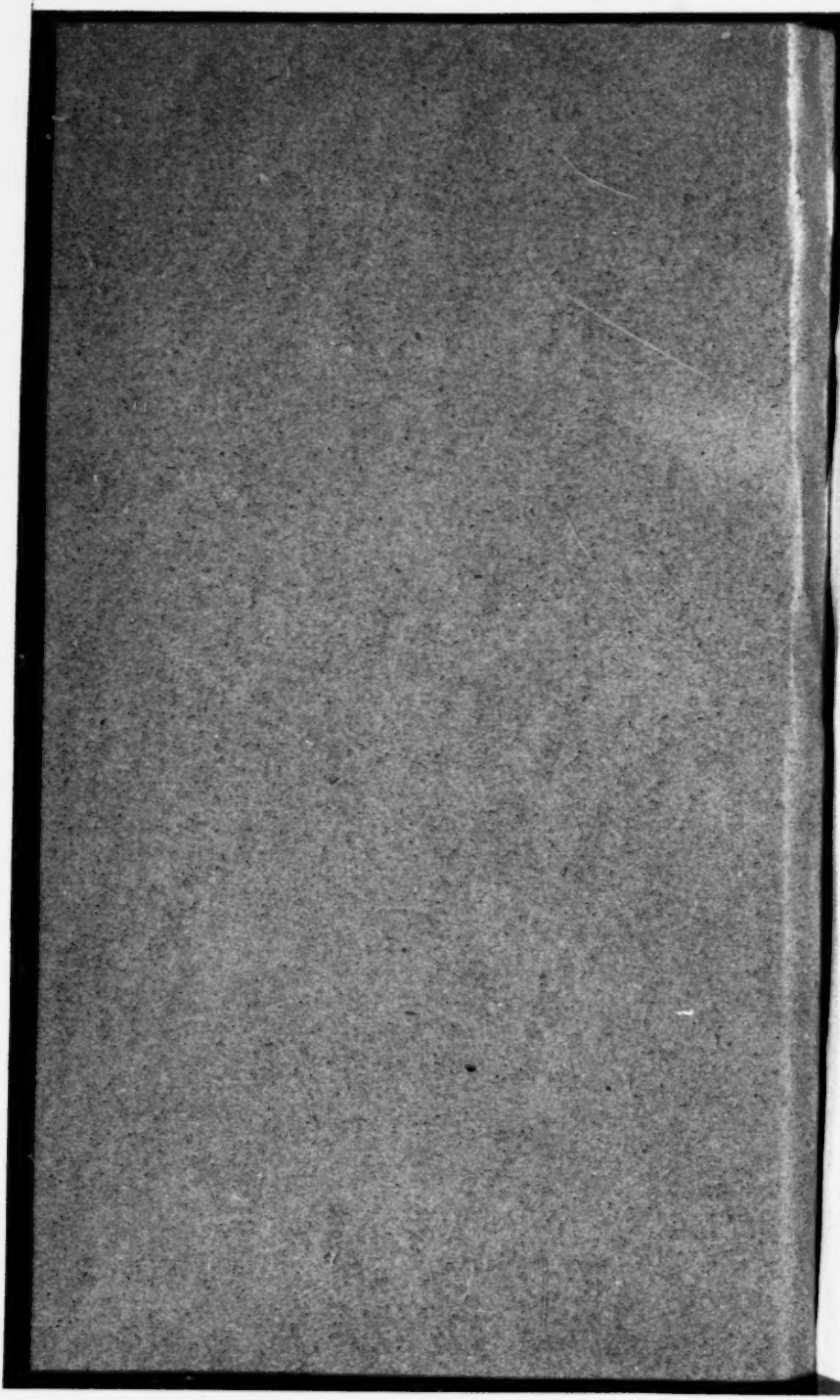
vs.

I. L. PATTERSON, COLLECTOR OF CUSTOMS FOR THE PORT OF PORTLAND, OREGON.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

FILED NOVEMBER 3, 1900.

(17,957.)



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1 In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for a Writ of *Habeas Corpus* as to Li Tom Shi and Li A. Tsoi, His Wife and Child. Citation on Appeal.

To I. L. Patterson, collector of customs for the port of Portland, district of Willamette, State of Oregon, and to John H. Hall, United States attorney for the district of Oregon and attorney for said I. L. Patterson, collector of customs, as aforesaid, Greeting:

Whereas Lee Lung has lately appealed to the *United States* Supreme Court of the United States of America *for* a decree rendered, in the district court of the United States for the district of Oregon in dismissing the petition of Lee Lung for a writ of *habeas corpus* herein, you and each of you are hereby cited and admonished to be and appear before said Supreme Court of the United States of America at the city of Washington, in the District of Columbia, before sixty days from the date hereof, to show cause, if any there be, why the said judgment order and decree, so far as Li Tom Shi is concerned, should not be *accorded* and speedy justice should not be done to the parties in that behalf.

Given under my hand at Portland, in said district, this 24 day of September, A. D. 1900.

CHARLES B. BELLINGER, *Judge.*

2 [Endorsed:] In the district court of the United States for the district of Oregon. In the matter of the application of Lee Lung for writ of *habeas corpus* as to Li Tom Shi. Citation on appeal. Filed Sep. 24, 1900. E. D. McKee, clerk U. S. district court.

3 In the District Court of the United States for the District of Oregon, March Term, 1900.

Be it remembered, that on the 28th day of April 1900, there was duly filed in the district court of the United States for the district of Oregon, a petition for a writ of *habeas corpus* in words and figures as follows, to wit:

4 In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for Writ of *Habeas Corpus* as to Li Tom Shi and Li A. Tsoi, His Wife and Child.

To the honorable the district court of the United States for the district of Oregon:

Your petitioner, Lee Lung, respectfully represents that he is a native-born citizen of the Chinese Empire; that he now is and has

been for more than twenty years last past a merchant, residing during all the said period of twenty years last past, except when absent on an occasional visit to China, during said time, in the city of Portland, State of Oregon, United States of America, carrying on and doing business therein as a merchant; that he is not and never has been a laborer; that as such merchant he belongs to the exempted classes of Chinese who, under the treaty between the United States of America and the Chinese Empire, and who, under the laws of the United States of America, are entitled to come into and reside and do business as merchants in the United States.

That about the month of October, 1898, your petitioner Lee Lung, left the United States temporarily and went on a visit to Canton China; that your petitioner returned to the United States on the ship "Monmouthshire" arriving at the port of Portland, State of Oregon, United States of America on the 3rd day of April, 1900; that on your petitioner's return to the United States he was promptly permitted to land by Hon. I. L. Patterson, collector of customs at the port of Portland, in the district of the Willamette as a Chinese merchant; that his right to land as a Chinese merchant was duly recognized by said collector of customs.

Your petitioner further represents that he has a wife whose name is Li Tom Shi and that he has a wife and daughter now in the tenth year of her age whose name is Li A. Tsoi.

Your petitioner further represents that on his return to the United States from China on the ship Monmouthshire, as aforesaid, your petitioner brought with him from China on said vessel his said wife Li Tom Shi and his said daughter Li A Tsoi, both of whom came with your petitioner as his family in said ship Monmouthshire, arriving at the port of Portland, Oregon, in the United States of America on the 3rd day of April, 1900, as aforesaid.

Your petitioner further represents that said I. L. Patterson, collector of customs aforesaid, at the port of Portland, Oregon on the 7th day of April, 1900, and without having any power or *examination* whatever to make any examination, except as to the certificates hereinafter referred to, made a pretended and partial examination, but no such examination as the law contemplates should be made in such cases, of the right of said Li Tom Shi and Li A Tsoi, wife and daughter of your petitioner as aforesaid, to enter into and remain in the United States as the wife and daughter of your petitioner, and then and there, to wit, on April 7, 1900, made what purports to be but what in fact is not a decision such as the law contemplates should be made in any Chinese case wherein such collector has jurisdiction to inquire and decide. But your petitioner avers that said collector of customs I. L. Patterson had, by reason of the existence and legal operation and effect of article III of the treaty between the United States of America and the Empire of China, ratifications of which were exchanged at Washington, December 7th, 1894, no jurisdiction or power whatever to inquire into or decide on testimony *aliunde* the certificates issued by the government of the colony of Hongkong and vised by the consular representative of the United States at the colony of Hongkong, China.

Your petitioner further represents that your petitioner and his family the said Li Tom Shi and the said Li A Tsoi, his wife and daughter aforesaid, for about one year before leaving China
6 for the United States as aforesaid, were all living in and residents of the city of Hongkong in the colony of Hongkong, and before leaving said colony of Hongkong for the purpose of coming to the United States as aforesaid, on said ship Monmouthshire, your petitioner's said wife and daughter applied to and obtained the permission of the government of the colony of Hongkong and *was* identified by the said government at Hongkong as the wife and daughter of your petitioner, and as being each entitled to come to the United States and reside therein as the wife and daughter of your petitioner; and said Li Tom Shi and said Li A Tsoi were each then subjects of the Chinese Empire and residents of the colony of Hongkong, and the said government of the colony of Hongkong did then and there, to wit, on or about the 3rd day of March, 1900, on evidence then submitted, determine and decide that said Li Tom Shi and said Li A Tsoi were the wife and daughter of your petitioner aforesaid respectively, and as such were each entitled to enter and remain in the United States as the family and wife and daughter of your petitioner, and said government of the colony of Hongkong did on said day, March 3rd, 1900, issue to each of said persons, namely, Li Tom Shi and Li A Tsoi, the wife and daughter of your petitioner aforesaid, a certificate each of which certificates was in the English language, and each of which showed such permission to your petitioner's said wife and daughter to come to and reside within the United States, and each of such certificates contained the name of said wife and daughter aforesaid respectively in their own proper signatures, and each of which certificates stated the individual, family, and tribal name, also the age, height and all physical peculiarities, occupation, and so forth, each of said certificates being in due legal form and in all respects in full compliance with article III of the treaty of 1894 hereinbefore referred to, and in all respects in full compliance with section 6, of the act of Congress of July 5, 1884, and acts supplemental to and amendatory thereof, although compliance with such acts of Congress your peti-
7 tioner respectfully claims was not necessary, and that each of said certificates were duly vised by the endorsement of the consular representative of the United States in said colony of Hongkong in all respects as provided by said treaty, and also in all respects as provided by said section 6 of the act of Congress of July 5, 1884, and laws supplemental and amendatory thereof, although compliance with the latter your petitioner respectfully represents was not necessary, in view of the provisions of the treaty aforesaid and of compliance therewith.

That said Li Tom Shi and said Li A Tsoi, wife and daughter aforesaid of your petitioner, are not either of them nor were they either of them ever at any time laborers, but the family of and the wife and daughter respectively of your petitioner a Chinese merchant.

And your petitioner further respectfully represents that on their

arrival at the port of Portland, Oregon, as aforesaid, the said Li Tom Shi and the said Li A Tsoi, wife and daughter of your petitioner aforesaid, presented said certificates respectively to said I. L. Patterson, collector of customs, aforesaid, and made claim that under and by virtue of such certificates they were entitled to enter and remain in the United States as the wife and daughter and family of your petitioner.

Your petitioner avers that in virtue of such certificates respectively the said Li Tom Shi and the said Li A Tsoi, wife and daughter aforesaid of your petitioner, were each entitled in virtue of said article III of the treaty aforesaid to enter the United States and reside therein as the family of your petitioner.

Your petitioner further claims, that notwithstanding all these facts, such certificates were each ignored by said I. L. Patterson, collector of customs, and held for naught, the said collector of customs refusing to recognize or consider the same and the said wife and daughter of your petitioner aforesaid were each wrongfully and unlawfully, and in violation of the rights of your petitioner's
8 said wife and daughter aforesaid, under the provisions of the treaty hereinbefore cited, refused entry into the United States by said I. L. Patterson, collector of customs aforesaid.

Your petitioner further represents that immediately on the rendition of said alleged and pretended decision by the said collector of customs, each of said persons, the said wife and daughter of your petitioner aforesaid, took an appeal from said alleged and pretended decision of said collector of customs to the Secretary of the Treasury of the United States; and your petitioner avers that the Secretary of the Treasury has never yet either examined into said appeals nor made any decision therein one way or the other, nor has said appeals or either of them ever been considered, examined or decided, either by O. L. Spaulding, Assistant Secretary of the Treasury, or by any other person except as hereinafter stated.

That on April 18th, 1900, one W. S. Chance, then chief of the special agents of the Treasury Department at Washington, D. C. pretended to examine said appeals and rendered a pretended decision therein, which pretended decision purports to affirm the alleged decision of the collector of customs aforesaid refusing to allow said Li Tom Shi and said Li A Tsoi, wife and daughter of your petitioner, to enter the United States.

Your petitioner avers that it is claimed as your petitioner is advised and believes, by the collector of customs aforesaid that said alleged decision by said W. S. Chance as hereinbefore stated is the decision of O. L. Spaulding, Assistant Secretary of the Treasury; but your petitioner denies that said O. L. Spaulding, either as Assistant Secretary of the Treasury or otherwise, has ever made any examination of said appeals, or has ever made any decision therein one way or the other.

And your petitioner further avers that the said O. L. Spaulding as Assistant Secretary of the Treasury has no authority or jurisdiction whatever, to examine into or decide said appeals or either of them, that said O. L. Spaulding, as Assistant Secretary of the Treas-

ury has never been legally or lawfully designated by the
9 Secretary of the Treasury to examine into and decide such appeals, and your petitioner avers furthermore that the Secretary of the Treasury has no jurisdiction or power whatever to designate or authorize Assistant Secretary of the Treasury O. L. Spaulding, or any other Assistant Secretary of the Treasury to examine into or decide said appeals.

And your petitioner further avers that the said I. L. Patterson, collector of customs aforesaid at the port of Portland, notwithstanding the invalidity of the said alleged decision by said W. S. Chance, and notwithstanding the further fact that said appeals have never yet been examined or decided either by the Sectretary of the Treasury or any Assistant Secretary of the Treasury authorized to decide the same, recognizes said decision as binding on him and as being an affirmance of his alleged decision refusing to allow said Li Tom Shi and said Li A Tsoi the wife and daughter of your petitioner, to enter and reside in the United States, and the said I. L. Patterson, collector of customs, aforesaid, now wrongfully detains and holds said Li Tom Shi and said Li A Tsoi the wife and daughter of your petitioner aforesaid, in his custody and now threatens to, and is about to place said Li Tom Shi and said Li A Tsoi the wife and daughter of your petitioner, aforesaid, on board the steamship Braemer now in the port of Portland, Oregon, and about to depart for China, and threatens to and intends to and will unless restrained by this honorable court place said wife and daughter of your petitioner on board said steamship and will send them back to China.

That said I. L. Patterson, collector of customs aforesaid, claims to hold the said wife and daughter of your petitioner as aforesaid under and by color of the authority of the United States and your petitioner's said wife and daughter *is* restrained in the custody of the said collector of customs aforesaid, and *is* about to be deported by him from this country back to China in violation of the treatys now existing between the United States of America and the Chinese Empire, and in violation of the acts of Congress now in force.

10 Your petitioner therefore claims that said Li Tom Shi and said Li A Tsoi, the said wife and daughter of your petitioner, are wrongfully and illegally imprisoned, detained, confined and restrained of their liberty by said I. L. Patterson, at the city of Portland, county of Multnomah, State and district of Oregon, the only cause or pretense for such wrongful and illegal imprisonment, restraint and detention being the alleged decision of the Assistant Secretary of the Treasury as aforesaid.

Finally your petitioner respectfully avers and claims that the said Li Tom Shi and the said Li A Tsoi, wife and daughter of your petitioner aforesaid are, by virtue of article III of the existing treaty between the United States of America and the Chinese Empire, hereinbefore cited, and by virtue of their certificates produced by them respectively to said collector of customs, as hereinbefore cited, entitled to enter and remain in the United States as the family and wife and daughter of your petitioner, a Chinese merchant; and your petitioner avers that their detention by the said I. L. Patterson,

collector of customs aforesaid, is without jurisdiction and without due process of law and in direct violation of their rights under the treaty hereinbefore cited, and the Constitution and laws of the United States.

And your petitioner further avers that said I. L. Patterson, collector of customs, aforesaid, was wholly without jurisdiction to take the testimony of witnesses, which he the said collector of customs did do, for the purpose of contradicting or controverting the facts stated in said certificates respectively as hereinbefore stated and referred to; and said I. L. Patterson, collector of customs aforesaid was without jurisdiction or power to decide on the testimony of such witnesses as to the rights of said Li Tom Shi and said Li A Tsoi, wife and daughter aforesaid of your petitioner, to enter and remain in the United States.

Your petitioner therefore respectfully represents to the court:

1st. That Li Tom Shi and Li A Tsoi, the said wife and
11 daughter of *of* your petitioner, *is* entitled to enter and remain in the United States as the wife and daughter of your petitioner a Chinese merchant; that they and each of them fully complied with all the provisions and requirements of the existing treaty aforesaid and of the laws of the United States, to entitle them to come and remain in the United States.

2nd. That said collector of customs, I. L. Patterson, had no jurisdiction whatever, to make the examination and decision he claims to have made, and that no such examination or decision of the appeals in said cases as the law contemplates *were* ever made by the Secretary of the Treasury or by any Assistant Secretary of the Treasury who had any jurisdiction or power to examine and decide such appeals.

3rd. That the said wife and daughter of your petitioner are entitled to have their said appeals decided by the Secretary of the Treasury as the law provides, and until such appeals are so considered and decided the said I. L. Patterson, as such collector of customs, has no jurisdiction, right or power whatever to deport the said wife and daughter of your petitioner, as he now threatens to do and will do unless restrained by this honorable court; and should they be deported as the said collector of customs now threatens to do, and intends to do, on said steamship Braemer, they will be taken out of the jurisdiction of this court and deprived of their constitutional and legal right to have their cases determined by the officials of this country as the law provides.

Wherefore, your petitioner prays that a writ of *habeas corpus* may issue in due form of law out of this honorable court, directed to the said I. L. Patterson, collector of customs aforesaid, commanding him to produce in this court at such time and place as may be designated in such writ, the bodies of said Li Tom Shi and Li A Tsoi, the wife and daughter of your petitioner aforesaid, for the purpose of such disposition as may be in accordance with the facts and the law of the case, and your petitioner will ever pray.

LEE LUNG, *Petitioner.*

12 UNITED STATES OF AMERICA, } ss:
State of Oregon, County of Multnomah, }

I, Lee Lung, being first duly sworn, say: That I am the petitioner in the above-entitled proceeding, and that the foregoing petition is true as I verily believe.

LEE LUNG.

Subscribed and sworn to before me this 27th day of April, 1900.
[SEAL.] H. C. ROBERTSON,
Notary Public for Oregon.

Filed April 28, 1900.

E. D. McKEE, *Clerk.*

13 And afterwards, to wit, on the 28th day of April, 1900, there was duly filed in said court, an order for writ of *habeas corpus* to issue in words and figures as follows, to wit:

14 In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for Writ of *Habeas Corpus* as to Li Tom Shi and Li A Tsoi, His Wife and Child.

Upon reading and filing the petition of Lee Lung, duly signed and verified by him, whereby it appears that Li Tom Shi and Li A Tsoi are illegally imprisoned and restrained of their liberty by I. L. Patterson, collector of customs, district of Willamette, port of Portland, Oregon, and stating wherein the alleged illegality consists, from which it appears to me that a writ of *habeas corpus* ought to issue, it is hereby ordered that a writ of *habeas corpus* issue out of and under the seal of this court directed to the said I. L. Patterson, commanding him to produce the body of the said Li Tom Shi and Li A Tsoi before me, in the court-room of the said court, on the 2nd day of May, 1900 at 10 o'clock a. m. of that day, to do and receive what shall then and there be considered concerning the said Li Tom Shi and Li A Tsoi and to certify and return therewith the time and cause of their imprisonment or restraint and that he have then and there the said writ.

Dated at Portland, Oregon, this 28th day of April, 1900.

CHARLES B. BELLINGER, *Judge.*

Filed April 28, 1900.

E. D. McKEE, *Clerk.*

15 And afterwards, to wit, on the 28th day of April, 1900, there was issued out of said court a writ of *habeas corpus* in words and figures as follows, to wit:

16 In the District Court of the United States for the District of Oregon.

The President of the United States of America to I. L. Patterson, collector of customs, district of Willamette, port of Portland, Oregon, Greeting:

You are hereby commanded that you have the bodies of Li Tom Shi and Li A Tsoi by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever names the said persons above named shall be called or charged, before the Honorable Charles B. Bellinger, judge of the district court of the United States for the district of Oregon, at the United States court-room, in the city of Portland, in said district, at 10 o'clock in the forenoon of Wednesday, the 2d day of May, A. D. 1900 to do and receive what shall then and there be considered, concerning the said persons above named.

And have you then and there this writ.

[SEAL.] Witness the Honorable Charles B. Bellinger, judge of said court, this 28th day of April, A. D. 1900.

E. D. McKEE, *Clerk*,
By G. H. MARSH,
Deputy Clerk.

[Endorsed:] No. 4499. In the district court of the United States for the district of Oregon. *In re* Li Tom Shi and Li A Tsoi, petitioner. Writ of *habeas corpus*. Returned and filed April 28, 1900. E. D. McKee, clerk, by ——— ———, deputy clerk.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I hereby certify that on the 28th day of April, 1900, at Portland, Oregon, Multnomah county, in said district, I duly served the original writ of *habeas corpus* upon the therein-named I. L. Patterson, collector of customs of district of Willamette, port of Portland, by delivering to him personally said original writ.

ZOETH HOUSER,
United States Marshal,
By S. L. MORSE, *Deputy.*

17 And afterwards, to wit, on the 7th day of May 1900 there was duly filed in said court, a return of respondent to writ of *habeas corpus*, in words and figures as follows, to wit:

18 In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for a Writ of *Habeas Corpus* as to Li Tom Shi and Li A Tsoi, His Wife and Child.

To the honorable the district court of the United States for the district of Oregon:

Now at this time comes I. L. Patterson, collector of customs for the district of Willamette, and in obedience to the order of your honorable court now produces the bodies of Li Tom Shi and Li A. Tsoi in court, and answering the petition for a writ of *habeas corpus* filed herein,

Denies that Li Tom Shi is the wife of Lee Lung, and that Li A. Tsoi is the daughter of Lee Lung.

Admits that petitioner brought with him from China on the ship "Monmouthshire" arriving in Portland upon the 3rd day of April, 1900, the said Li Tom Shi and the said Li A. Tsoi, representing them to be his wife and daughter, respectively.

Denies that your respondent, collector of customs as aforesaid, upon the 7th day of April, 1900, or at any other time without having power of examination, except as to certificates issued by the government of the colony of Hongkong and vised by the consular representative of the United States at said colony, or that he made a pretended or partial examination, or did not make said examination as the law contemplates should be made in such cases of the right of said parties to enter into and remain in the United States as the wife and daughter of petitioner, or otherwise or at all, or that on the said 7th day of April, 1900, or at any other time made what purported to be, but what in fact was not a decision as to the admission of said parties.

19 Denies that respondent had no jurisdiction to decide on testimony *aliunde* the said certificates claimed to have been issued, as aforesaid.

Admits that said Li Tom Shi and the said Li A Tsoi were residents of the city of Hongkong in the colony of Hongkong, and for the purpose of coming to the United States applied to and obtained what purported to be a permission of the government of the colony of Hongkong to come to the United States, but denies that said permission is regular in form, or that the said parties therein mentioned *was* identified as the wife and daughter of the said Lee Lung.

Denies that the said Li Tom Shi and Li A. Tsoi alleged wife and daughter of petitioner's are not laborers; denies that they are the wife and daughter respectively of petitioner.

Admits that on the arrival of the said parties in the city of Portland they presented said alleged certificates to your respondent as collector of customs, and made claim that under and by virtue of said certificates they were entitled to enter and remain in the United States as the wife and daughter of Lee Lung; denies that by virtue of said certificates or either of them the said Li Tom Shi and Li A. Tsoi, alleged wife and daughter of petitioner, were entitled in virtue

of article III of the treaty between the United States of America and the Empire of China, referred to in said petition, to enter into the United States, or reside therein as the family of Lee Lung.

Denies that said certificates or either of them were ignored by respondent, but admits that they were held to be insufficient to permit the said parties to land within the United States, but denies that said alleged wife and daughter, or either of them, were wrongfully or unlawfully, or in violation of the rights of the said Lee Lung's alleged wife and daughter under the provisions of the treaty referred to refused entry into the United States by respondent, or were otherwise refused except as hereinafter stated.

Admits that the said Li Tom Shi and the said Li A. Tsoi upon the rendition of the decision by your respondent denying them the right to land in the United States that the said Li Tom Shi
20 and the said Li A. Tsoi took an appeal from said decision to the Secretary of the Treasury of the United States, but denies that the said Secretary of the Treasury has never yet examined into said appeal nor made any decision therein, or that said appeal has not been considered, examined or decided by either O. L. Spaulding, Assistant Secretary of the Treasury, or any other person in authority.

Denies that W. S. Chance, chief of the special agents of the Treasury Department at Washington, pretended to examine said appeal or rendered a pretended or any decision therein, or any pretended decision which purported to affirm the alleged decision of the collector of customs, refusing to allow the said parties to enter the United States. Denies that said O. L. Spaulding as Assistant Secretary of the Treasury has no authority or jurisdiction to examine into or decide such appeals, or that the said O. L. Spaulding as Assistant Secretary of the Treasury has never been legally or lawfully designated by the Secretary of the Treasury to examine into and decide such appeals; and denies that the Secretary of the Treasury has no jurisdiction or power whatever to designate or authorize the Assistant Secretary of the Treasury, O. L. Spaulding, or any other Assistant Secretary of the Treasury to examine into or decide said appeals.

Admits that under a decision of the Secretary of the Treasury affirming the decision of respondent refusing said parties to land within the United States, your respondent now detains and holds the said Li Tom Shi and the said Li A. Tsoi in his custody for deportation to the country from whence they came, but denies that said detention is unlawful.

Denies that the said Li Tom Shi and the said Li A. Tsoi, or either of them, are wrongfully or illegally imprisoned, detained, confined or restrained of their liberty by your respondent at the city of Portland, county of Multnomah, State of Oregon, or elsewhere or at all.

21 Denies that the said Li Tom Shi or the said Li A. Tsoi, or either of them, are by virtue of article III, or any other portion of the existing treaty between the United States of America and the Chinese Empire, or by virtue of their alleged certificates produced by them to your respondent entitled to enter in or remain in the

United States as a family or wife, or daughter of said Lee Lung or otherwise or at all.

Denies that your respondent, collector of customs as aforesaid, was wholly or at all without jurisdiction to take testimony of witnesses which he did do for the purpose of contradicting and controverting the facts pretended to be stated in said pretended certificates was without jurisdiction or power to decide the testimony of said witnesses as to the rights of the said Li Tom Shi and the said Li A. Tsoi, alleged wife and daughter of the said Lee Lung, to enter or remain in the United States.

Denies that Li Tom Shi and Li A. Tsoi, or either of them, are entitled to enter or remain in the United States as the wife or daughter of the said Lee Lung, or otherwise or at all, or that they, or either of them, have fully or at all complied with all or any of the provisions or regulations of the existing treaty and laws of the United States to entitle them to come or remain within the United States, and denies that your respondent had no jurisdiction to make or examine a decision, or that no examination or decision of the appeals in said cases as the law contemplates were made by the Secretary of the Treasury or any assistant thereof who had jurisdiction or power to examine or decide such appeals.

Your respondent for a further and separate return and reasons why he detained the said Li Tom Shi and Li A. Tsoi in his custody, alleges:

That on the 7th day of April, 1900, at the port of Portland, in the State and district of Oregon, the said Li Tom Shi and Li A. Tsoi, made application to land in the United States at said port of Portland from the ship "Monmouthshire" as of the excepted class
22 of Chinese persons; that the said Li Tom Shi and the said Li A. Tsoi, each presented what they claimed to be a certificate issued by the government of the province of Hongkong and vised by the United States consul general at Hongkong, the originals of which are hereunto attached and made a part of this return; that the said certificates were not in conformity with the laws of the United States, not being signed by the registrar general of Hongkong person in authority there, and who is required to sign such certificates, but was signed by one F. A. May, whom your respondent is informed, and therefore alleges was the then captain general of police of Hongkong, and that a Mr. Lockhart is the registrar general of Hongkong; that Mr. Lockhart's name does not appear upon said alleged certificates; that said certificates were duly considered by your respondent and your respondent took other testimony to determine whether or not the said Li Tom Shi and Li A. Tsoi were of the excepted class of Chinese persons entitled to land as such under the laws of and treaties of the United States; that after considering all of the testimony together with said certificates your respondent as collector of customs rendered his decision in the case of Mrs. Li Tom Shi in substance as follows to wit:

"No. 1.

"Office of the collector of customs, district of Willamette.

"PORTLAND, OREGON, *April* 7, 1900.

"Now at this time comes on for hearing the application of Mrs. Li Tom Shi a subject of the Emperor of China, for admission to the United States as a wife of Lee Lung, and after hearing the evidence of applicant and witnesses on behalf of the applicant, and the evidence of Lee Lung and Miss Li A. Tsoi and irregularity of consular certificate, and no evidence of marriage, and being at this time fully advised in the premises, it is ordered that the said Mrs. Li Tom Shi be refused a landing upon the ground that the evidence produced by said applicant is insufficient and unsatisfactory to prove *his* right to land.

"I. L. PATTERSON,
"[SEAL.] *Collector of Customs.*"

Did upon the same date render a like decision with the exception of there being no reference to marriage, in the case of Li A. Tsoi; that thereafter upon the 10th day of April, 1900, said Li Tom Shi and the said Li A. Tsoi duly perfected an appeal from the said decision of the collector of customs denying them the right to land in the United States to the Secretary of the Treasury of the
23 United States, the said Secretary of the Treasury, by O. L. Spaulding Assistant Secretary of the Treasury, on the 18th day of April, 1900, rendered an opinion duly affirming said decision of your respondent, refusing said parties to land within the United States, the original of which is hereunto appended, and made a part of this return; that respondent does not detain or hold either the said Li Tom Shi or Li A. Tsoi for any other reason or cause save and except as herein set forth.

Wherefore, respondent prays your honorable court for an order remanding the said Li Tom Shi and the said Li A. Tsoi to his custody for deportation from the United States to the country from whence they came.

I. L. PATTERSON.

DISTRICT OF OREGON, *ss:*

I, I. L. Patterson, being first duly sworn, depose and say, that I am the collector of customs for the district of Willamette; that I have read the foregoing return and know the contents thereof, and that the same is true as I verily believe so help me God.

I. L. PATTERSON.

Subscribed and sworn to before me this 7th day of May, 1900.

E. D. McKEE,
Clerk United States District Court, District of Oregon,
By G. H. MARSH, *Deputy.*

24 Refused. No. 2.

Office of the collector of customs, district of Willamette.

PORTLAND, OREGON, *April* 7, 1900.

Now at this time comes on for hearing the application of Miss Li A Tsoi a subject of the Emperor of China, for admission to the United States as a daughter — Lee Lung and after hearing the evidence of applicant and —— ——, witnesses on behalf of the applicant, and the evidence of Mrs. Li Tom Shi and Lee Lung and irregularity of papers, and being fully advised in the premises, it is ordered that the said Miss Li A Tsoi be refused a landing upon the ground that the evidence produced by said applicant is insufficient and unsatisfactory to prove *his* right to land.

[SEAL.]

I. L. PATTERSON,
Collector of Customs.

25 EXHIBIT "A."

Certificate of Li A Tsoi.

No. 1794.

This certificate is issued under the treaty between the Government of the United States and the government of China proclaimed by the President of the United States on the 8th day of December, 1894, in conformity with section 6 of the act of Congress of the United States, approved 6th July, 1884, entitled An act to amend an act to execute certain treaty stipulations relating to Chinese, approved May 6th, 1882, to Li A Tsoi, a Chinese person, "other than a laborer," who is about to go to the United States, as evidence of the permission of the government where *he* last resided for *him* to go to the United States, and as a means of establishing *his* identity; and it shall be *prima facie* evidence of *his* right to land in the United States.

(Photograph.)

{ Seal of the Registrar General, Hongkong. }

Name of permitted person in his or her proper signature: Cannot write.

Full name, individual: A Tsoi family Li tribal Li.
Title or official rank, if any: ——.
Age: 10 years Height, feet 4, inches ½.
Physical marks or peculiarities: No marks or scars.
Former occupation or profession: } Daughter of Li Lung, merchant of Portland, Oregon, U. S. A.
Where pursued: }
Present occupation or profession: }
Estimated value of last-mentioned business: ——.
Where pursued: Hongkong & Canton. When: In 1890–1900.
For how long: 10 years. Place of residence: 50 Bomham strand.
Is not a laborer, and is entitled to land in the United States

under the act of Congress approved July 5th, 1884, and the treaty of March 17th, ratified December 7th, 1894. To *going* with her father to Portland, Oregon, U. S. A., where she will commence to study English.

3rd March, 1900.

F. H. MAY,
By Registrar General, Hongkong.

26 I do hereby certify that I have examined into the truth of the statements set forth in the foregoing certificate, and find upon examination that the same are true. The seal and signature to the foregoing certificate are the genuine seal and signature of F. H. May.

In witness whereof, I have hereunto set my hand and affixed the seal of this consulate at Hongkong the day of Mar. 5, 1900.

[SEAL.] R. WILDMAN,
U. S. Consul General.

Fee for vise, $1. Gold.

Under an opinion of the U. S. Attorney General, dated May 20, 1896, this certificate will be valid if signed by the proper officer of the government in which the Chinese last resided, and the registrar general at Hongkong is recognized as competent to sign certificates for Chinese residents of that colony of the exempt class. The Secretary of the Treasury has uniformly held that the omission from these certificates of any of the statements required in the statute, is fatal to the sufficiency of the certificate, as showing *prima facie* right to enter the United States.

Endorsed: Br. S. S. "Monmouthshire." April 6, 1900. Miss Li A Tsoi, daughter Lee Lung. Refused Apr. 7, 1900.

27 Refused. No. 1.

Office of the collector of customs, district of Willamette.

PORTLAND, OREGON, *April* 7, 1900.

Now at this time comes on for hearing the application of Mrs. Li Tom Shi a subject of the Emperor of China, for admission to the United States as a wife of Lee Lung and after hearing the evidence of applicant and —— ——, witnesses on behalf of the applicant, and the evidence of Lee Lung and Miss Li A Tsoi and irregularity of consular certificates, and no evidence of marriage, and being at this time fully advised in the premises, it is ordered that the said Mrs. Li Tom Shi be refused a landing upon the ground that the evidence produced by said applicant is insufficient and unsatisfactory to prove *his* right to land.

[SEAL.] I. L. PATTERSON,
Collector of Customs.

28 EXHIBIT "B."

Certificate Li Tom Shi.

No. 1793.

This certificate is issued under the treaty between the Government of the United States and the government of China proclaimed by the President of the United States on the 8th day of December, 1894, and in conformity with section 6 of the act of Congress of the United States, approved 6th July, 1884, entitled An act to amend an act to execute certain treaty stipulations relating to Chinese, approved May 6th, 1882, to Li Tom Shi, a Chinese person, "other than a laborer," who is about to go to the United States, as evidence of the permission of the government where *he* last resided for *him* to go to the United States, and as a means of establishing *his* identity; and it shall be *prima facie* evidence of *his* right to land in the United States.

(Photograph.)

{ Seal of Registrar General, Hongkong. }

Name of permitted person in his or her proper signature: Cannot write.

Full name, individual: Tain Shi family Li tribal Li.

Title or official rank, if any: ——.

Age: 21 years Height, feet 4, inches 9¼.

Physical marks or peculiarities: No marks or scars.

Former occupation or profession: Unmarried woman.

Where pursued: San Wui district.

Present occupation or profession: Wife of Li Lung, merchant of Portland, Oregon, U. S. A.

Estimated value of last-mentioned business: ——.

Where pursued: Hongkong & Canton. When: In 1898–1900.

For how long: Fourteen months. Place of residence: 50 Bonham strand.

Is not a laborer, and is entitled to land in the United
29 States, under the act of Congress approved July 5th, 1884, and the treaty of March 17th, ratified December 7th, 1894. To *going* with her husband to Portland, Oregon, U. S. A.

3rd March, 1900.

F. H. MAY,
By Registrar General, Hongkong.

I do hereby certify that I have examined into the truth of the statements set forth in the foregoing certificate, and find upon examination that the same are true. The seal and signature to the foregoing certificate are the genuine seal and signature of F. H. May.

In witness whereof, I have hereunto set my hand and affixed the seal of this consulate at Hongkong, this day of Mar. 5, 1900.

[SEAL.] R. WILDMAN,
U. S. Consul General.

Fee for vise, $1. Gold.

Under an opinion of the U. S. Attorney General, dated March 20, 1896, this certificate will be valid if signed by the proper officer of the government in which the Chinese last resided, and the registrar general at Hongkong is recognized as competent to sign certificates for Chinese residents of that colony of the exempt class. The Secretary of the Treasury has uniformly held that the omission from these certificates of any of the statements required in the statute, is fatal to the sufficiency of the certificate, as showing *prima facie* right to enter the United States.

Endorsed: Br. S. S. "Monmouthshire." Apr. 6, 1900. Mrs. Li Tom Shi wife Lee Lung. Refused April 7, 1900.

30 Division of special agents.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, *April* 18, 1900.

Collector of customs, Portland, Oregon.

SIR: The department has received your letter of the 11th instant, transmitting an appeal from your decision denying admission to Chinese persons named Li Tom Shi and Li A. Tsoi, the alleged wife and daughter of Lee Lung, a Chinese merchant domiciled in this country.

The applicants presented to you certificates in the form prescribed by section 6 of the act of July 5, 1884, executed by "F. H. May registrar general," Hongkong, and you state that Mr. May is the captain of police at Hongkong and not the registrar general. You are advised that certificates so issued are not valid, the incumbent of the office of registrar general at Hongkong only being recognized as the proper authority for the issuance of such certificates.

The appeal filed in this case refers to the recent decision of the Supreme Court in the case of The United States *vs.* Mrs. Gue Lim *et al.*, promulgated in Synopsis 22056, wherein it was held that "when the fact is established to the satisfaction of the authorities that the person claiming to enter, either as wife or minor child, is in fact the wife or minor child of one of the members of a class mentioned in the treaty as entitled to enter, then that person is entitled to admission without the certificate."

In this case Li Tom Shi is admitted to be the second and plural wife of Lee Lung, a Chinese merchant domiciled in this country, whose first wife resides in China, and it is claimed that Li A. Tsoi is the minor child of the said Lee Lung by said first wife.

The laws of the United States do not recognize plural marriages as valid, and while they may be so recognized in China, the said

Li Tom Shi is not the valid wife of Lee Lung under our laws and in the light of the decision of the Supreme Court referred to.

31 In a letter addressed to the collector of customs at Port Townsend, Washington, it was stated that "in instances where women or minor children apply for admission at your port, claiming to be the wives or children of Chinese persons lawfully domiciled here as persons of the exempt class of Chinese, you should require such women or children to produce evidence sufficient to satisfy you that they are the wives or children of such persons."

In the cases under consideration the evidence presented in the case of Li A. Tsoi is conflicting and inconclusive, and not of the satisfactory character required.

Confirming department's telegram of this date, you are therefore advised that the appeals of Li Tom Shi and Li A. Tsoi are overruled and your decision denying them admission is sustained. The enclosures of your letter are herewith returned.

Respectfully,

O. L. SPAULDING,
Assistant Secretary.
W. S. C.

Enclosures.

Endorsed: Return to writ of *habeas corpus*. Filed May 7, 1900. E. D. McKee, clerk.

32 And afterwards, to wit, on the 7th day of May, 1900, there was duly filed in said court a reply to return of respondent, in words and figures as follows, to wit:

33 In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for Writ of *Habeas Corpus* as to Li Tom Shi and Li A Tsoi, His Wife and Child.

To the honorable the district court of the United States for the district of Oregon:

Now, at this time, comes Lee Lung, the petitioner in the above-entitled proceeding, and makes reply and traverse to the return of I. L. Patterson, collector of customs, filed herein as follows:

Your petitioner denies that the certificates produced by said Li Tom Shi and Li A Tsoi to the collector of customs, were not in conformity with the law of the United States;

Your petitioner denies that under the laws of the United States it was necessary that such certificates should be signed by the registrar general of Hongkong, or that he is required to sign such certificates; although your petitioner avers that said certificates and each of them were signed by one F. A. May at the instance and under the direction of the registrar general of Hongkong and as and for him.

And your petitioner avers that F. A. May, whose signature is attached to each of said certificates, and placed there together with

the official seal of the registrar general with the consent and at the instance and under the directions of the registrar general of Hongkong, is an official himself, high in authority in the British colony of Hongkong, and with full jurisdiction and power to represent the government of the British colony of Hongkong, and also the registrar general in the matter of the execution of such certificates, and each of said certificates contains the official seal of the registrar general of the British colony of Hongkong, by authority of
34 such government; and the said certificates, your petitioner avers, are each of them the certificates of the government of the British colony of Hongkong, and are in all respects all that is required by the law of the United States and the treatys of the United States now existing between the United States Government and the imperial government of China.

Your petitioner further replying, as in his petition, avers that said I. L. Patterson, collector of customs, erred in holding said certificates and each of them irregular, and in admitting testimony to contradict such certificates, and in all this the collector of customs exceeded his jurisdiction, erred in law, and his decision is therefore reviewable in this court.

Your petitioner denies that the Secretary of the Treasury by O. L. Spaulding, Assistant Secretary of the Treasury, did on the 18th day of April, 1900, or at any other time, render an opinion duly affirming said alleged decision of the collector of customs.

Your petitioner avers that what is averred to be the original of such opinion and decision attached to the return herein, shows upon its face that it is not the decision of the Secretary of the Treasury, or of Assistant Secretary of the Treasury, O. L. Spaulding, but that the same is the decision of W. S. Chance, chief of the special agents of the Treasury Department.

Your petitioner further avers that the pretended hearing before the collector of customs on the 7th day of April, 1900 as aforesaid, was had before your petitioner had secured any counsel, and he had no counsel present to advise him as to his rights before the collector of customs, and that such examination was without jurisdiction, perfunctory and was not a thorough examination of the case.

Wherefore, your petitioner prays as in his original petition.

LEE LUNG, *Petitioner.*

35 UNITED STATES OF AMERICA, }
District of Oregon, County of Multnomah, } ss:

I, Lee Lung, being first duly sworn, say: That I am the petitioner named in the foregoing reply, and that said reply is true as I verily believe.

LEE LUNG.

Subscribed and sworn to before me this 7th day of May, 1900.

[SEAL.] H. C. ROBERTSON,
Notary Public for Oregon.

UNITED STATES OF AMERICA, }
District of Oregon, } ss:

Due and legal service of the foregoing reply by duly certified copy thereof, as required by law, is hereby admitted and accepted at Portland, Oregon, this — day of May, 1900.

JOHN H. HALL,
Attorney for Respondent.

Filed May 7, 1900.

E. D. McKEE, *Clerk.*

36 And afterwards, to wit, on the 9th day of May 1900 there was duly filed in said court a motion to quash writ in words and figures as follows, to wit:

37 In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for a Writ of *Habeas Corpus* as to Li Tom Shi and Li A. Tsoi, His Wife and Child.

Now at this time comes I. L. Patterson by John H. Hall, U. S. attorney, and moves the court that the writ of *habeas corpus* heretofore issued in the above-entitled cause be dismissed for the reason that your honorable court hath not jurisdiction of the subject-matter or over the persons therein named.

JOHN H. HALL,
United States Attorney.

Filed May 9, 1900.

E. D. McKEE, *Clerk.*

38 And afterwards, to wit, on Saturday, the 12th day of May 1900, the same being the 60th judicial day of the regular March term of said court; present: the Honorable Charles B. Bellinger United States district judge presiding, the following proceedings were had in said case, to wit:

39 In the District Court of the United States for the District of Oregon.

In the Matter of the Petition of LI TOM SHI and LI A TSOI for a Writ of *Habeas Corpus.* No. 4499.

MAY 12, 1900.

This cause was tried by the court upon the petition and return of respondent and the testimony and was argued by Mr. John H. Mitchell and Mr. Charles J. Schnabel, of counsel for the petitioners, and by Mr. John H. Hall, United States attorney; and it appearing to the court that this court is without jurisdiction in this cause, it is ordered and adjudged that the petition for a writ of *habeas corpus* be, and the same is hereby, dismissed, and that said petitioners Li Tom Shi and Li A Tsoi be, and they are hereby, remanded to the custody of the respondent from whence they came.

40 And afterwards, to wit, on the 12th day of May, 1900, there was duly filed in said court an opinion in words and figures as follows, to wit:

41 In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for a Writ of *Habeas Corpus* for Li Tom Shi and Li A Tsoi, His Wife — Child.

John H. Hall for the Government.
John H. Mitchell and Charles J. Schnabel for the petitioner.

BELLINGER, *J.*:

This is a proceeding on a writ of *habeas corpus*, issued upon the petition of Lee Lung in behalf of Li Tom Shi and Li A Tsoi, his wife and child, who recently arrived at this port on the steamer Monmouthshire and were refused landing by the collector of customs. Lee Lung is a merchant, doing business in this city and having business connections with various Chinese mercantile establishments throughout the country. He is the agent of the North Pacific Steamship Company in soliciting Chinese passengers to and from China by that line. He was a passenger by the same steamship upon which his wife and daughter arrived. Before going to China he consulted with an attorney in this city, and also saw the collector of customs at this port, with reference to the evidence necessary to secure the landing of his wife and child, and was informed that a certificate issued out of the registrar general's office at the port of Hongkong, that being the port of his intended departure, visaed by the American consul, would accomplish such object. In accordance with this advice Lee Lung procured certificates issued out of the office of the registrar general at Hongkong, and under the seal of that office, visaed by the American consul general at that port, as required by law, which certificates in all respects conform to the requirements of the act of Congress, and which are made by
42 such act *prima facie* evidence of the right of the persons named therein to land in the United States.

It is alleged in the petition for the writ that the collector of customs at this port disregarded the evidence thus provided, and, without authority of law, refused to permit Li Tom Shi and Li A Tsoi to land; that he made no decision such as the law contemplates shall be made, and that his acts as aforesaid, in ignoring the certificates issued out of the registrar's office at the port of Hongkong, were wrongful and unlawful, and in violation of the rights of the petitioner's wife and daughter aforesaid, under the provisions of the treaty of the United States with the Chinese government, and that the appeal taken by the petitioner to the Secretary of the Treasury was not heard or passed upon by that officer, but that there was a pretended decision in respect thereto by one W. S. Chance, a special agent of the Treasury Department.

The collector of customs in his return to the writ alleges that the

certificates in question were not in conformity with the laws of the United States, by reason of the fact that they were not signed by the registrar general at Hongkong, the person in authority there, but were signed by one F. A. May, who is alleged to be the captain general of police at that port. He further alleges that said certificates were duly considered by him, and that he took other testimony as to the right of the persons named in the petition to land, and decided adversely thereto, and that petitioner's appeal from such decision was heard and adversely decided by O. L. Spaulding, Assistant Secretary of the Treasury.

In the case of Way Tai, 96 Federal, 484, it was held in this court, by Judge Gilbert, on the authority of decisions by the Supreme Court of the United States, that the collector is not required to conform his proceedings to what is known as due process of law; that the collector of customs is not required to take any testimony at all, but to decide as to the right to land upon his own inspection and examination, and that his decision in respect thereto is final;
43 and such is the effect of the decisions of the Supreme Court cited in that case. By these decisions it is held that "the statute does not require inspectors to take any testimony at all, and allows them to decide on their own inspection and examination the question of the right of any alien immigrant to land." Nishimura Ekiu's case, 142 U. S. 651.

In the earlier case of Gin Fung, decided by the same judge, 89 Federal, 153, the petitioner was discharged upon writ of *habeas corpus*, where it appeared that the collector of customs only heard part of the testimony of one witness, and then left the room, delegating further examination of the witness to one B. F. Jossey, Chinese inspector; that the petitioner presented another witness on the following day, at the office of the collector, where he was met by said inspector, who offered to hear the testimony of the witness presently, but intimated to such witness that he might be arrested for false swearing if he testified as a witness in the proceeding, with the result that the witness was intimidated thereby and refused to testify; that as a matter of fact the steamer had cleared from the port of Portland on the previous evening, on her way to China, taking the petitioner with her. Upon appeal to the circuit court of appeals, this case was reversed, and it is held in effect that the court is without jurisdiction to discharge, upon writ of *habeas corpus*, where the collector undertakes to deport a petitioner without a hearing, or pending a hearing; that the power of the court might be properly exerted in such case to arrest the consequences of the collector's illegal act, but that it could go no further. 100 Fed., 389. It is not clear as to what is meant by jurisdiction in the courts to "arrest the consequences of the collector's illegal act." If the court is without jurisdiction to inquire, upon writ of *habeas corpus*, as to the legality of the petitioner's detention under such circumstances, it is without any jurisdiction whatever in the premises. So far as I am advised, there is no power in the courts to control
44 the action of the collector of customs as suggested. These cases establish the doctrine that the collector of customs, in

determining the right of Chinese persons to land, may act upon his own information and discretion, and that such action, however taken, is conclusive of the matter, subject to the right of appeal to the Secretary of the Treasury; that his decision, if he decides not to hear testimony, or not to give effect to evidence which the laws of Congress have provided shall be sufficient to establish the right to land in the first instance, or decides not to decide, is conclusive. Under the doctrine of these cases, it is immaterial, so far as the jurisdiction of this court is concerned, whether the petitioner's appeal to the Secretary of the Treasury is heard by the Secretary in person or by a subordinate official in his department or is heard at all.

The petition for the writ is dismissed.

Filed May 12, 1900.

E. D. McKEE, *Clerk.*

45 And afterwards, to wit, on the 21st day of September 1900 there was duly filed in said court, a petition for appeal and assignment of errors, in words and figures as follows, to wit:

46 *Petition for Appeal.*

In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for a Writ of *Habeas Corpus* as to Li Tom Shi and Li A. Tsoi, His Wife and Child.

Now comes Lee Lung, conceiving himself aggrieved by the order, judgment and decree made and entered on or about the 12th day of May A. D. 1900, in the above-entitled cause, — does hereby appeal from said order, judgment and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herein, and he prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order, judgment and decree *was* made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 20th day of September, A. D. 1900.

JOHN H. MITCHELL AND
CHAS. J. SCHNABEL,
Attorney- for said Lee Lung and Petitioner.

Due service of the foregoing petition for appeal, together *of* the assignment of errors, and citation on appeal, herein by copies thereof, all duly certified to is hereby admitted this — day of September, 1900.

JOHN H. HALL,
U. S. Attorney for the District of Oregon and
Attorney for I. L. Patterson, Collector of
Customs, Port of Portland, Oregon.

Filed September 21, 1900.

E. D. McKEE, *Clerk.*

47 *Assignment of Errors.*

In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for a Writ of *Habeas Corpus* as to Li Tom Shi and Li A. Tsoi, His Wife and Child.

Lee Lung, in the above-entitled cause, in connection with his petition for an appeal, makes and assigns the following errors, which he avers occurred upon the hearing and determination of this cause and his application for a writ of *habeas corpus* herein, for and in behalf and for the body of Li Tom Shi, his wife, and upon which he will rely upon appeal to the Supreme Court of the United States of America.

1.

Error of the court in holding that upon the facts set forth in the petition herein,—that the act of Congress approved August 18, 1894, has withdrawn from the jurisdiction of the courts authority to act in the premises or to issue the writ.

2.

Error of the court in dismissing petitioner's application herein.

JOHN H. MITCHELL AND
CHAS. J. SCHNABEL,
Attorneys for Lee Lung and Petitioner.

Filed September 21, 1900.

E. D. McKEE, *Clerk.*

48 And, to wit, on the 26th day of October 1900 there was duly filed in said court, an undertaking on appeal, in words and figures as follows, to wit:

49 & 50 In the Matter of the Application of LEE LUNG for a Writ of *Habeas Corpus* as to Li Tom Shi.

Know all men by these presents, that we, Lee Lung, of Portland, Multnomah county, State of Oregon, as principal, and the American Bonding and Trust Company, a corporation organized and existing under the laws of the State of Maryland, and authorized to do the surety business in the State of Oregon, as surety, are held and firmly bound unto the United States of America in the sum of two hundred and fifty dollars ($250.00), to be paid to the said United States of America, to which payment, well and truly to be made, we bind ourselves our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Whereas the above-named Lee Lung petitioner has appealed to the Supreme Court of the United States to reverse the judgment and decree in the above-entitled cause by the district court of the United States for the district of Oregon:

Now, therefore, the condition of this obligation is such, that if the above-named Lee Lung shall prosecute said appeal to effect, and answer all costs adjudged against him, if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

In witness whereof, the said principal has hereunto set his hand and seal, and the said surety has caused these presents to be signed by its attorney-in-fact for the State of Oregon, and its corporate seal to be attached this 17th day of October, A. D. 1900.

LEE LUNG. [SEAL.]

THE AMERICAN BONDING AND TRUST COMPANY OF BALTIMORE CITY,

By S. B. LINTHICUM, *Vice-Pres't.*

Attest:

[SEAL.] JAS. McI. WOOD, *Ass't Sec'y.*

Signed, sealed and delivered in presence of:

E. BERIN.

(52 ½ int.-rev. stamps.)

Filed October 26, 1900.

E. D. McKEE, *Clerk.*

51 And, to wit, on Monday, the 24th day of September, 1900, the same being the 70th judicial day of the regular July term of said court; present: the Honorable Charles B. Bellinger, United States district judge presiding, the following proceedings were had in said cause, to wit:

52 *Order Allowing Appeal.*

In the District Court of the United States for the District of Oregon.

In the Matter of the Application of LEE LUNG for a Writ of *Habeas Corpus* as to Li Tom Shi and Li A. Tsoi, His Wife and Child.

On this 24th day of September, 1900, comes John H. Mitchell and Charles J. Schnabel, attorneys for Lee Lung, the petitioner herein, and present to the court the petition of the said Lee Lung, praying for the allowance of an appeal to the Supreme Court of the United States from the order and decree heretofore entered in this cause, so far as the same relates to Li Tom Shi, wife of said Lee Lung; praying also that a transcript of the record, proceedings and papers on which the judgment, order, and decree *was* herein rendered, duly authenticated, may be sent to the Supreme Court of the United States and such other and further proceedings may be had as may appear proper in the premises.

On consideration whereof, it is ordered that an appeal be allowed as prayed for.

CHARLES B. BELLINGER, *Judge.*

Filed September 24, 1900.

E. D. McKEE, *Clerk.*

53 And afterwards, to wit, on the 6th day of July, 1900, there was duly filed in said court testimony taken before the court upon the hearing in words and figures as follows, to wit:

54 LEE HONG, sworn on behalf of the petitioner.

Direct examination.

Questions by Senator MITCHELL:

State your name, age and occupation.
A. Lee Hong; merchant.
Q. Where were you born?
A. In China.
Q. How long did you live in China?
A. Since sixteen years old, I was come over to Portland.
Q. Came away when you were sixteen years old?
A. Yes, sir.
Q. Have you been back there several times since?
A. One time.
Q. How long did you remain then?
A. Remain in China?
Q. Yes.
A. About three years; between two and three years.
Q. What was your age then, about?
A. Well, at that time I was 23 or 24.
Q. State whether you are a married man, or single?
A. I am a married man.
Q. Where were you married?
A. In China.
Q. When?
A. When I was twenty-one years old.
Q. Now state to the court, if you know, what is the usage in China—what does it take, under the usage in China, to constitute a marriage?

Mr. HALL: May it please the court, I desire at this time to enter an objection to this testimony, or any testimony for the purpose of here determining the facts that must, necessarily, have been determined by the collector of customs. And this question leads up to that point directly. They propose here at this time to show that the conclusion upon the question of fact by the collector of customs was an erroneous one. This court has held uniformly, particularly in the case of Wai Ti, settled last summer, that this court would not, and could not, review upon *habeas corpus* the action
55 of the collector of customs, and also indicated that if the collector of customs had not done his duty, the only thing this court could or would do, if that was shown, would be to direct him to proceed. The circuit court of appeals, in the case of Gin Fung, which reversed Judge Gilbert in this district, followed this court in that view, and stated that the decision of Judge Gilbert in holding that the Chinaman should be discharged was too broad, and that the only power that the court had, the only jurisdiction it

had, was to determine whether or not this man had had a hearing such as the law contemplates; whether or not he had had an opportunity to present witnesses before the collector of customs, and a determination there had. But the object of this testimony is to retry before this court the question of fact which the collector of customs himself tried out, and that, we claim, is wholly incompetent.

COURT: The testimony may be admitted subject to your objection.

Mr. HALL: Save an exception.

COURT: I do not hold that this testimony is competent. I will admit it subject to the objection.

Mr. HALL: The objection will be considered as to the testimony right along.

COURT: Yes, it may all be considered objected to.

A. In Chinese law, in Chinese customs, when people going to marry, they engage the girl first; some engage by his parents, some introduced by his friends, or himself. After they get engagement already made, then they fix up the date of when they are going to be wedding. When they going to fix up the date of wedding, well, they going to tell all his friends and all his relations to come to attend the wedding on the date of wedding; and then on
56 the date all friends come to the house.

Q. Whose house?

A. The bridegroom's house. And then in the bridegroom's house they all come to the house; until the bride comes to the bridegroom's house, they all stand in the house to receive the bride; and then they pay a visit to everybody.

Q. How does she come?

A. The bride come on a kind of sedan chair, decorated with flowers and everything.

Q. Is that an ordinary chair, or is it known as a wedding chair?

A. It is a wedding chair, different from the usual chair; all decorated, and covered with flower-, and covered with red silk.

Q. Is that chair carried, or how?

A. Carried by two men.

Q. From the bride's house to the groom's house?

A. Yes, sir.

Q. Is that such a chair as, going through the streets, everybody would know it meant a wedding?

A. Oh, yes, anybody see it on the street, they would know the party was going to a wedding.

Q. How?

A. Because they can tell that kind of sedan chair, decorated, entirely different from the usual chair.

Q. How about the bride? Is she decorated differently?

A. Yes, the bride has kind of wedding gown, in red color, so that the reason to show the good luck, the Chinese custom of red, the good luck. So the bride wear the red color of the wedding gown.

Q. Two men carry her in this wedding chair, this sedan chair. Is she accompanied by any lady friends?

A. Yes. Bridemaids go along.
Q. They walk, do they?
A. Yes, the bridemaids walk; they walk beside.
57 Q. When they get to the groom's house, is he dressed any differently from ordinary?
A. The bridegroom?
Q. Yes.
A. Yes, he different.
Q. How?
A. They generally get a silk long coat, and different cap entirely, different from the usual wear.
Q. When she comes there, then he receives her, and introduces her to his friends?
A. Yes, when the bride comes to the bridegroom's house, they pay respectful to the bridegroom, and then they send big, long firecracker, you know.
Q. What else do they do?
A. After they go in the bridegroom's house to pay respect to her husband, then the husband receive her, and take her into the big room, the big parlor, you know, and introduce to all friends, and then they call to everybody, call all over every one friends.
Q. Do they have anything to eat?
A. All through that night until the next day, then they go invite friends to dinner, friends and relations.
Q. And have a wedding dinner?
A. Have a wedding dinner.
Q. And then they are married?
A. Then they are married.
Q. That constitutes the wedding?
A. That constitutes the Chinese marriage.
Q. You have no certificate, no papers issued?
A. No.
Q. No priest?
A. No, no; no minister, no preachers.

Cross-examination.

Questions by Mr. HALL:

You say you were married first when you were 23?
A. No, 21. I am not the petitioner. I am Lee Hong.

Excused.

58 LEE LUNG sworn on behalf of the petitioner.

Direct examination.

Questions by Senator MITCHELL:

State your name, age, residence and occupation.
A. Lee Lung; Kwong Sang Wo Company, 143 Second street, Portland, Oregon. Age 34.
Q. Where were you born?

A. In Canton, China.
Q. When did you leave Canton for America, first?
A. The very first I come here about thirteen years old.
Q. You have been here, then, except when you were away temporarily, have you, about twenty years?
A. Yes.
Q. What is your business?
A. I am in Portland.
Q. What do you do? What is your business? Are you a laborer?
A. No, store.
Q. Merchant?
A. Merchant.
Q. How many times have you returned to China since you came here?
A. Three times I return to China.
Q. About when did you go back first?
A. First time stay about five or six years. About eighteen years go to China.
Q. When you were eighteen years old?
A. Yes, eighteen years old.
Q. How long did you remain there that time?
A. Stay that time in China about one year.
Q. When did you go back the second time?
A. The second time I go back twenty-two year.
Q. You mean when you were twenty-two years old?
A. Yes, twenty-two years old.
Q. How long did you stay then?
A. That time stay in China about three years.
59 Q. Went back when you were about twenty-two and remained till you were twenty-four?
A. Yes. No, come back again twenty-five.
Q. When did you leave here the last time to go back to China?
A. The last time thirty-two years old.
Q. When was it? Can you tell what month it was? What year? Last September, was it, or October?
A. September, or October.
Q. October?
A. Yes.
Q. 1898?
A. Yes, sir.
Q. A year ago last October?
A. Yes.
Q. And you returned on the Monmouthshire, did you, recently?
A. Yes.
Q. I will ask you who this lady is?
A. That is my wife.

Mr. HALL: The same objection, your honor, to this witness' testimony.
COURT: Yes.

Q. Who is this little lady?
A. That is my daughter.
Q. State when and where you were married to your wife. About when were you married to your wife—how long ago?
A. I go to China now about sixteen months.
Q. About how long ago was it you married your wife?
A. Last time?
Q. How many months ago, how long ago? How long have you been married?
A. How long been married to that wife?
Q. Yes.
A. Over a year now.
Q. Where were you married?
A. In China.
Q. What part of China?
A. Canton.
Q. State how you were married, what took place.
A. I married, and my friends introduced me, and go see mother, say he is married this girl; girl likee and I likee, and just
60 talking over, it is married.
Q. Your friend, you say, went to her mother?
A. Yes.
Q. And arranged it?
A. Yes.
Q. Did you have an engagement?
A. Yes.
Q. How long was that before the marriage?
A. Not very long; about a couple of weeks.
Q. A couple of weeks before?
A. Yes.
Q. Were any presents then passed between you?
A. Yes, some gold jewelry, before we were married.
Q. Is that the custom in China, when persons are engaged, to pass presents?
A. Yes.
Q. State whether there was a day fixed for the wedding; if you agreed some days before, what day you would be married.
A. What day?
Q. Yes.

Mr. HALL: How do you claim this is material?
Mr. MITCHELL: I want to show it is according to custom there; that is all.

Q. State what took place the day of the marriage. What did your wife do? What did you do?
A. When marry that time, my father get wedding chair, and he get everything, and everything take out to my house, and after he get wedding chair two men carry it, come into my house.
Q. She came in a chair?
A. Yes.
Q. Did somebody carry the chair?

A. Yes.
Q. How was the chair decorated?
A. The chair different; get silk, and have flower; everything fixed; different kind of chairs.
Q. Is it known as a wedding chair?
A. Yes; all different.
Q. How is it different?
A. Well, different; he get flower, and he get all silk, and put it outside.
61 Q. What color?
A. Pretty near all red.
Q. How was she dressed—differently too?
A. Marry, come into my house that time, red coat.
Q. How were you dressed, differently?
A. Yes, I dressed red cap and long coat, and differently?
Q. Is that a wedding garment in China?
A. Yes.
Q. She came to your house and you received her there?
A. Yes.
Q. Your friends there?
A. Yes.
Q. Were your friends and relatives there at the house?
A. Yes.
Q. State what else took place?
A. Come in the house that time, and all friends shoot firecrackers, and my wife come in the house, and my wife bring friends, and tea, and sit there; take a little cake, talk there, have a little fun; after a while friends go home.
Q. Have any dinner?
A. Well, dinner is the next day.
Q. I will ask you whether you had resided in the colony of Hongkong before you came on here, you and your wife?
A. What do you mean?
Q. Where did you live before you came here—live in Hongkong?
A. Yes.
Q. About how long?
A. Live about a year.
Q. That is after you were married?
A. Yes.
Q. Did you live with this woman there?
A. Yes.
Q. Did you have the daughter with you?
A. Yes.
Q. She was with you there in Hongkong?
A. Yes.
Q. I will ask you if you went with your wife and daughter to the office of the registrar general to get a certificate.
A. I bring my wife and daughter, go to the registrar general's office, and I ask him, "I want to go back to United States." He tell me, "If you go, you get a picture." At that time I hadn't
62 a picture yet. At that time he told me to get a picture.

I go and get a picture; about two day the picture ready, and I bring it to the registrar general's office, and he fix that paper, and next day he give me the paper, three paper, one he wrote up all ready fixed, and two blank. He told me to bring up, write just the same; and next day I got a friend, I got my partner this paper, and I brought it to the registrar general's office, and he fix it all right.

Q. At the registrar general's office?

A. Yes.

Q. Were the seals put on there?

A. Yes. The seals this office, and next day I bring it to the United States consul.

Q. He put his seal on there?

A. Yes, and he write that name.

Q. On both of them?

A. Yes; he give it to me.

Q. What is the fee for these certificates—the colonial fee?

A. $50 China money, each.

Q. $50 in silver?

A. Yes.

Q. About $25 in gold?

A. Yes.

Q. You paid that, did you, to the registrar general?

A. Yes.

Q. $50 in gold for the two?

A. Yes, sir.

Q. You paid the consul general how much for his fee?

A. $1.00 in gold.

Q. I will ask you, when you left here if you made provision in order to bring back a wife with you?

A. Yes.

Q. Did you go and see anybody about it—any attorney?

Mr. HALL: Objected to; the attorney is the best evidence.

COURT: You may answer the question, subject to the objection.

Mr. HALL: Save an exception.

Q. State if, before you went away, you went to see your attorney here, Mr. Schnabel?

A. Yes.

63 Q. In order to find out what was necessary to do?

Mr. HALL: Those questions are leading, as well.

Q. State what you did. When you went to see Mr. Schnabel where did you go?

A. I told Schnabel to make out the certificate before I go, you mean?

Q. Yes. Did you go to see the collector with Mr. Schnabel?

A. Go to China that time?

Q. Did you go with Mr. Schnabel to see the collector, Mr. Patterson, before you went away, to see what was necessary?

A. I think I go see him before I go, and he not say much.

Q. You went to see your counsel, and you was governed by what he said? You did as he said?

A. What?

Q. You did what he advised you to do, did you?

A. You mean I come back that time?

Q. Before you went away you got a certificate?

Mr. HALL: I object to that suggestion to the witness. Ask him what he did.

Q. You got a certificate before you went back to China, did you?

Objected to as leading.

A. Yes.

COURT: It is not material about the form. You may answer the question.

A. I go away that time, I make out the certificate, one leave in the custom-house.

Q. You brought your wife back with you, did you, on the Monmouthshire?

A. Yes.

Q. And the child?

A. Yes, sir.

Q. These are the same persons whose pictures are in the certificates?

A. Yes.

Q. You intend to live with her as your wife here, and have
64 your child live with you?

A. Yes.

Q. You had no counsel at the time you had a hearing before the collector when you came back, had you?

A. No attorney.

Q. Mr. Patterson admitted you when you came back?

A. Yes.

Q. But he didn't admit your wife and daughter? You had no counsel there, no lawyer?

A. No, no lawyer.

Q. Why didn't you have a lawyer?

A. Everything fixed all right, no trouble. You see I fixed paper coming Hongkong; I got paper before I go to China to bring my wife and daughter; no trouble, you see. If I know there was any trouble, I would get a lawyer.

Q. How old is your little daughter?

A. Ten years old.

Q. How old is your wife?

A. Twenty-one.

Cross-examination.

Questions by Mr. HALL:

This daughter—where is her mother?

A. She is married in China.

Q. Is she your wife now? You got two wife now?
A. Yes.
Q. One wife in China, your first wife?
A. Yes.
Q. The mother of this little girl?
A. Yes.
Q. Where does she live—the little girl's mother?
Objected to.
Testimony admitted subject to the objection.
Q. Where does the little girl's mother live?
A. In China.
Q. Whereabouts?
A. In Canton.
Q. You were married in Canton?
A. Yes.
Q. Where did you live when you were married?
A. I married that time, I live in Canton.
Q. The same house with your other wife?
65 A. No, different house.
Q. Didn't you live with the other wife?
A. My other first wife was different place, different city.
Q. You go there and live by and by, didn't you?
A. I married first time in Canton, and after a while go over the other place.
Q. And both wives live in the same house?
A. Yes.
Q. All together?
A. Yes.
Q. How long did you live that way? How long did you and your two wives live in that place?
A. About a month.
Q. How far is that place from Canton?
A. From Canton, go my old place?
Q. Yes.
A. Oh, I guess about—take steamer go about two days.
Q. It takes about two days to go?
A. Yes.
Q. How long does it take to go from Canton to Hongkong?
A. I think about one hundred miles.
Q. You think it is about one hundred miles away?
A. Yes.
Q. Then you were married in Canton?
A. Yes.
Q. And went over to this other place? What is the name of this other place?
A. Chin Nin.
Q. You were married in Canton, and lived there how long?
A. Lived Canton about over a month.
Q. Then you went over to Chin Nin?
A. Yes.

Q. Lived there?
A. Yes, about a month.
Q. Then you went to Hongkong?
A. Yes.
Q. How long did you live at Hongkong?
A. Oh, about a year, I think.
Q. Then after you lived there about a year, you went up before somebody there to get a paper to bring your wife to the United States?
66 A. I go and get paper myself.
Q. You go and get paper yourself? You no take the wife?
A. Well, I take the wife too.
Q. Whom did you take with you when you went up there?
A. Hongkong?
Q. Yes.
A. My partner.
Q. How long had your partner lived in Hongkong?
A. A long time. My wife and daughter, all together, go to the registrar general's office.
Q. And he gave you a paper, you paid him $50?
A. Yes.
Q. And he gave you a paper?
A. Yes.
Q. Your other wife: does she live in China now?
A. Yes.
Q. The little girl's mother?
A. Yes.

Redirect examination:

Q. What is the law and usage in China in regard to having more than one wife?
A. In China?
Q. Yes. How many wives can a man have if he wants to?
A. In China a rich man can have as many wives as he wants.

Excused.

67 LEE HUNG recalled on behalf of the petitioner.

Direct examination.

Questions by Mr. MITCHELL:

State what is the usage and law in China in regard to the number of wives a man may have.

Mr. HALL: Objected to; he has not shown himself as competent.

Q. Do you know what the law is, and usage and custom?
A. Yes.
Q. What is it?

(Mr. HALL:)

Q. Are you a lawyer?
A. No, sir, I am not a lawyer.

COURT: I do not think it will be necessary to be technical about this.

Mr. HALL: You might ask him what the custom is. I don't think he is qualified to tell what the law is.

Q. Well, what is the custom?
A. Well, I understand the China law got nothing against for two or three wives. If a man want to marry two or three wife, if they can get money enough to support it, they can have it. The rich people and some of the high officer they get two or three or four; you can't tell. In our law in China they got nothing against for the wives.

Excused.

68 CHARLES J. SCHNABEL, sworn on behalf of the petitioner.

Direct examination.

Questions by Mr. MITCHELL:

Mr. Schnabel, you may state your business.
A. Occupation, attorney-at-law.
Q. State if you have been the adviser of the petitioner in this case heretofore?
A. I have.
Q. If so, state for about what length of time—the legal adviser, I mean.
A. I have; since about the summer of 1898.
Q. I will ask you what he did. State what occurred in reference to an application to you about his going away—what it was necessary to do, etc.
A. He came to me some time, I should judge, in the middle of the summer—July or August, 1898, and stated that he was trying to arrange his affairs—I might state he is president of the Bow Yuen Company and also a member of the firm of Kwong Sang Wa Company—he stated he was arranging his business affairs to go back to China, and he says "Some time before, now, in the fall, I would like to have you go to the collector or look up the law and find out just exactly what must be done in order that I may return without any trouble and bring with me my family, my wife and daughter." So I called upon Collector Patterson, the present incumbent, and talked over the matter with him, and I saw that his ideas and my ideas on the interpretation of the laws and rules were the same. Later on he came in, and he says, "Well, I have arranged my business affairs and I am going on the steamer that sails in October." So I remember of drawing up a paper in which he made those statements, the same paper that was introduced before the collector this last time. Those certificates were signed by Mr. J. F. Watson, of the Mer-

chants' national bank; Mr. R. M. Dooly; I think Mr. Wm.
69 M. Ladd; Colonel Beebe; I think George Taylor; well, some of the very best men in the city. I know that, because we told him we wanted nothing but that. Then I heard from him indirectly in China.

Mr. HALL: Object to what you heard indirectly; it is not competent.

A. In pursuance to a request I called upon Collector Patterson during the month of January of this year.

Q. While he was in Hongkong?

A. Yes. Stating that Lee Lung was about to return to this country with his family, and he had requested me to call upon the collector to see if any change had taken place in the rules, regulations or laws governing the return of merchants and their families, and what was necessary to be done by him before taking the boat for this country. I went down and saw the collector, talked with him, and he says, "He has a certificate as regards his own standing, and as regards the family, have him go to the registrar general in Hongkong." He says "In that case, he is to go to the registrar general of the British colony at Hongkong, and then have him go before our consul general, or consul." Words to that effect. I came back, and I think I wrote out the substance.

Mr. HALL: A copy of the letter would be the best evidence.

A. I am not sure whether I did, or whether I just made an oral statement to the president of his firm, Mr. Lee Hung, which information I was told was to be sent to Lee Lung. And I saw a cable from him, dated March 5th I believe, stating that he had——

Mr. HALL: Object to that; the cable is the best evidence.

Q. He complied then with all your instructions as his adviser, did he?

A. Yes, and instructions given us by the laws, and opinions of the Attorney General, and also the collector of customs.

70 Mr. HALL: What was the matter when this man got here? Why didn't he admit him?

Mr. HALL: He did admit him.

COURT; Why didn't he admit the family on those evidences required by law?

A. I might state, if the court please, that neither Lee Lung nor any one thought it was necessary to have him represented by counsel, because he says "Case too plain; case too plain; never mind, Mr. Schnabel, taking up your time." Consequently we did not bother about any examination, and there was no counsel present. He didn't ask for any; didn't want any. In fact, there wasn't any need for any.

Cross-examination.

Questions by Mr. HALL:

There had been every facility for appearing there before Mr. Patterson?
A. Yes, sir.
Q. He treated you very nicely?
A. Yes.

Excused.

71 LI TOM SHI sworn on behalf of the petitioner.

Lee Hong sworn as interpreter.

Direct examination.

Questions by Mr. MITCHELL:

Ask her where she was born.
A. Canton.
Q. Ask her her name?
A. Li Tom Shi.
Q. How old is she?
A. Twenty-one.
Q. Ask her who this is?
A. She says her husband.

Mr. HALL: I object to this testimony.
COURT: Yes, it will go in subject to the objection.

Q. Ask her when she was married to him?
A. She says she married her husband about sixteen months ago.
Q. Where?
A. Canton city.
Q. Canton, China?
A. Yes, Canton, China.
Q. Ask her how they were married; what did they do?
A. Introduced her by friends, and tell her mother, and then she go and marry this gentleman.
Q. What did she do the day of the wedding? What was done? How did they act?
A. She said she sat on sedan chair, with decorated.
Q. Went to his house?
A. Yes, sir.
Q. What took place there at the house?
A. She said when she get her husband's house, then they introduced to all the friends, and then have tea and little China cakes, to pay respect to every one of friends and relations.
Q. Have firecrackers?
A. Yes.
Q. Any dinner?
A. Next day dinner.
Q. State where they lived. Ask her whether she went to live at Hongkong.

A. She said she lived in Hongkong with her husband about a year.

72 Q. With this gentleman—with this husband?

A. Yes, sir.

Q. Did this little girl live with you?

A. Yes, sir.

Q. Ask her who that little girl is, if she knows.

A. She says her husband's former wife's child.

Q. About how long were they—a year or more—in Hongkong?

A. She said about a year.

Q. Ask her if she went up to the registrar general's office with her husband and the child to get the certificate.

A. Yes, sir, they go with her husband.

Q. Got their certificates there?

A. Yes, get the certificates.

Q. Ask her if she got any wedding presents—any wedding presents passed.

A. She says her husband presented her jewelry—bracelets and earrings.

Q. That is your picture, is it?

A. Yes, sir.

Q. Is that the little girl's picture there in that certificate, that paper there?

A. Yes, sir.

Q. And the other one—ask her whose picture that is?

A. Herself.

Cross-examination.

Questions by Mr. HALL:

Where were those pictures taken?

A. Hongkong.

Q. How long before you went up to the registrar general's office were the pictures taken?

A. She said——

Q. She didn't say anything. You let her answer, and give me her answer. Don't you answer for her.

A. No, I just answer what her says, you know.

Q. Ask her if she knew anybody in Hongkong?

A. No, sir.

73 Q. Ask her where she first saw this little girl.

A. Sing Nin.

Q. Whereabouts?

A. She said the district of Sing Nin.

Q. At whose house?

A. Her husband's house.

Q. Who else was there?

A. She said her husband's former wife and her boys.

Q. Ask her if they all lived there together.

A. Yes, sir.

Q. How long?

A. About one month.
Q. Did Lee Lung live there with both wives?
A. Yes, sir.

Redirect examination:

Q. Lived in the same house?
A. Yes, sir.

Excused.

Mr. HALL: The only way I can advise your honor is to submit letters from Mr. Spaulding, and let the court compare them.
(Certain letters are here submitted to the court by the counsel for the Government.)

74 LEE LUNG recalled on behalf of the petitioner.

Direct examination.

Questions by Mr. MITCHELL:

I will ask you if that is your picture attached to that?
A. Yes.
Q. Are you the man referred to in these papers?
A. Yes.
Q. Is this your signature Lee Lung?
A. Yes, sir.

Mr. MITCHELL: I will call the attention of the court to that signature.
Mr. HALL: Objected to as incompetent and immaterial, as far as this case is concerned.

Excused.

Mr. HALL: If the court please, I desire in the same connection to introduce a letter from Secretary Gage.
COURT: Very well.
Mr. HALL: It is on the same subject of the powers granted secretaries, together with copies of the ruling.
Mr. MITCHELL: We object to all these papers, on the ground that he cannot delegate his official power.
COURT: I notice that the letter from the department states that the finding of the collector is that these certificates were not signed by the registrar general, but by a policeman May. What evidence is there of that fact?
Mr. MITCHELL: All we have got is the certificate.
Mr. HALL: They are advised of that in the appeal. Mr. Mitchell and Mr. Schnabel set out in their appeal which they sent on to the Secretary of the Treasury the fact that Mr. May was a prefect of police there, but is not the registrar general.
75 COURT: How comes he to exercise those functions?
Mr. HALL: We haven't any idea. The Government of the United States does not recognize any one except the registrar general at Hongkong.

Mr. MITCHELL: The statute does not say one word about the registrar general. The Attorney General says the certificate of the registrar general will be accepted. We claim, in this case, as it has the seal of that office, the presumption follows that it was executed by the authority of the Government.

76 PORTLAND, OREGON, *Oct.* 6, 1897.

Messrs. Dodwell, Carlill & Co., agents Northern Pacific Steamship Co.

GENTLEMEN: The undersigned, Lee Lung, Chinese merchant residing at the city of Portland, Oregon, by this asks the agency of your company as solicitor for Chinese passengers to and from China via the Northern Pacific Steamship Co. line of which you are agents. I have resided and been engaged as a Chinese merchant in the city of Portland for fifteen years and am able to speak the English language fluently and to write the same fairly well. That for the last ten years I have been a partner in the Chinese firm of Kwong Sang Wa Co., doing business at No. 143 Second street in the city of Portland, Oregon. That I also own an interest and am a partner in other firms:

Bow Yuen Co. 129 Second street, Portland, Oregon.
Kwong On Chung Co., Astoria, Oregon.
Hop Lung Co. No. 103 Park avenue, Baltimore, Md.
Quong Yuen Shing Co. No. 5 Mott St., New York city, N. Y.
Kam Sang Yuen Co. No. 50 Bonham strand, Hongkong, China.
Tai Lun Co. No. 96 Jervais St. Hongkong, China.
Wing Chong Loong, 128 Praya West Hongkong.
Tai Yick, 31 Bonham West, Hongkong.

That in addition to the business interests above set forth I have an extensive acquaintance among the Chinese residents in the different portions of the United States, and in the event I should succeed in having your agency as above suggested feel assured that I should be able to exert a favorable influence on the Chinese passenger traffic by your line between Portland and Hongkong as well
77 in the United States as in China through my Hongkong connections.

Very respectfully yours, LEE LUNG.

(Photograph.)

Oregonian, October 28th, 1897.

Secured it by petition.—Lee Lung, manager of the Kwong Sang Wa Company's store, on Second street, has been appointed agent of the new line of steamers plying between Portland and the Orient, to attend the Chinese passenger business. There were a number of applicants for the position among the Chinese merchants, but Lee Lung was given the preference. To secure the coveted honor Lee took advantage of his observations in Portland, and his knowledge of the potency of a petition. He got one up in good style, a yard long, and the number of his recommendations must have over-

powered the general agent of the line and secured for him the place.

Oregonian, October 29, 1897.

Chinese will return.—The Chinese merchants of the city are generally well satisfied with the appointment of Lee Lung, of the Kwong Sang Wa Company, as Chinese passenger agent of the new line of Oriental steamers. A number of Chinese in Portland are preparing to return to their native land, and in consequence there is great rivalry between the Chinese agents, acting for the three different lines, to sell tickets to their departing countrymen. The Braemar will likely take out quite a number.

78 PORTLAND, OREGON, *October 6th*, 1897.

To whom it may concern:

This is to certify that Lee Lung is a Chinese merchant residing in the city of Portland, State of Oregon, being one of the principal members of the Kwong Sang Wa Company and Bow Yuen Co., two of the leading Chinese merchant firms in said city; that he is a reliable Chinese merchant, and one who speaks the English language with considerable fluency; that he is the agent of the Northern Pacific Steamship Company for the purpose of attending to the Chinese passenger business thereof, and is traveling in the interest of said steamship company throughout the United States. This statement or certificate is made in order that said Lee Lung shall have this written evidence of his character and business, so that he be not in any way molested, restricted or interfered with in looking after said business.

79 We the undersigned citizens of Oregon, residing at the city of Portland, certify that we are acquainted with Lee Lung, a merchant of the firm of Kwong Sang Wa Co. No. 143 Second street in said city, and know him to be a reliable Chinese merchant, and one who speaks the English language with considerable fluency. That he is a very active and energetic person, and would consider him well qualified to act in any capacity, where an influence among the Chinese people was requisite.

We have known him for the time indicated with our signatures hereunto.

Name.	Occupation.	Length of time have known Lee Lung.
R. M. Dooly.....	Cash'r W. F. & Co.'s bk., Portland.	Over two years.
Tyler Woodward.....	Pres. U. S. nat. bank, Portland.	About four years.
F. C. Miller	Cash'r U. S. nat. bank	Five years.
R. L. Durham	Vice-p't Merch. nat. bk....	Six years.
Theo. B. Wilcox	Pt. Port. Flg. Mills Co.....	10/12 yrs.
Chas. E. Ladd	Of Ladd & Tilton.....	10/12 years.
L. A. Lewis.....	Of Allen & Lewis.....	Some time.

Julius C. Lang.....	Of Lang & Co.....	Seven years.
Fred. H. Rothchild...	Pres't of Rothchild Bros...	Two years.
W. J. Van Schuyver..	Pres't of W. J. Van Schuyver Co.	Ten years.
Eugene Shelby	Agent Wells, Fargo & Co.'s Exp.	Twelve years.
W. T. Harlow	Ag't N. P. Express Co.....	Fourteen years.
Chas. F. Beebe.....	The Chas. F. Beebe Company.	Three years.
Roderick L. Macleay..	Corbitt & Macleay Co.....	Two years.

80 We the undersigned citizens of Oregon, residing at the city of Portland, certify that we are acquainted with Lee Lung, a merchant of the firm of Kwong Sang Wa Co. 143 Second street in said city, and know him to be a reliable Chinese merchant, and one who speaks the English language with considerable fluency. That he is a very active and energetic person, and would consider him well qualified to act in any capacity, where an influence among the Chinese people was requisite.

We have known him for the time indicate- with our signatures hereunto.

Name.	Occupation.	Length of time known Lee Lung.
James S. Reed.....	Gen'l ins'ce agency.....	Ten years.
H. C. Wortman.....	Sec'y Olds & King.....	14 years.
Taylor, Young & Co..	Ship brokers.....	5 years.
Jas. R. McCraken.....	Sec'y The J. McCraken Co..	10 years.
Geo. W. Hahn.....	Hahn's.....	5 years.
Sylvester Farrell.....	Everding & Farrell.....	8 years.
T. N. Stoppenbach....	Sec'y Pacific Paper Co.....	4 years.
Napoleon Davis.....	Pres't Columbia Telephone Co.	2 years.
P. J. Barry.....	Chief of police.....	7 years.
J. H. Kelly.....	Ch'f clerk Ainsworth dock..	3 years.
Fred'k V. Holman....	Lawyer.....	1 year.
Warren E. Thomas...	Lawyer.....	2 years.
J. W. Whalley.....	Lawyer.....	8 years.
John Kelly.....	General insurance.....	12 years.

81 We the undersigned citizens of Oregon, residing at the city of Portland, certify that we are acquainted with Lee Lung, a merchant of the firm of Kwong Sang Wa Co. 143 Second street in said city, and know him to be a reliable Chinese merchant, and one who speaks the English language with considerable fluency. That he is a very active and energetic person, and would consider him well qualified to act in any capacity, where an influence among the Chinese people was requisite.

We have known him for the time indicated with our signatures hereunto.

Name.	Occupation.	Length of time known Lee Lung.
Edw. Cookingham.....	With Ladd & Tilton.....	5 years.
B. E. Lippincott.....	Customs broker.....	10 years.
W. E. Pulliam...	Deputy collector of customs.	4 years.
Sol Rosenfeld.....	President Rosenfeld-Smith Co.	8 yrs.
John R. Swinton.....	Insurance.....	7 yrs.
U. K. Arnold.....	Insurance.....	9 years.
R. J. Hendrie.....	Book-keeper estate of Frank Dekum.	12 years.
M. C. Harrison.....	Marine adjuster.....	Four years.
W. Hearn.....	M'g'r Postal Telegraph Co.	Seven years.
George P. Dekum.....	Rec. teller Wells, Fargo & Co. bank.	Eight years.
W. W. Peaslee.....	Peaslee Bros. Co., printers..	Five years.
Leo Peterson.....	Editor Commercial Review, newspaper.	Three years.
Chas. J. Schnabel.....	Attorney-at-law.....	5 years.

82 We the undersigned citizens of Oregon, residing in the city of Portland, certify that we are acquainted with Lee Lung, a merchant of the firm of Kwong Sang Wa Co. No. 143 Second street in said city, and know him to be a reliable Chinese merchant, and one who speaks the English language with considerable fluency. That he is a very active and energetic person, and would consider him well qualified to act in any capacity, where an influence among the Chinese people was requisite.

We have known him for the time indicated with our signatures hereunto.

Name.	Occupation.	Length of time have known Lee Lung.
C. W. Knowles.....	Hotel-keeper.....	Two years.
J. Frank Watson.....	Pres. Merchants' nat'l bank.	About five years.
J. C. Robinson.....	Manager Turner Flouring Mills Co.	About eight years.
D. D. Oliphant.....	Pres. Oregon & Wash. Flour Co'y.	
J. Frank Davis	Dep. coll. int. rev.....	10 years.
C. E. S. Wood.....	Att'y-at-law.....	About ten years.
W. A. Holt.....	Paying teller W. F. & Co. b'k.	About seven years.
Geo. D. Schalk.....	Pass. ag't O. R. & N. Co...	About six years.
Irving Sayford	The Oregonian.....	

83 We the undersigned Chinese merchants residing and doing business at the places indicated with our signatures hereunto are well acquainted with Lee Lung of the firm of Kwong Sang Wa Co. of the city of Portland, Oregon, and believe he is able through his business connections and acquaintance *and* with the Chinese residents in various parts of the United States to exert a large influence in the direction of the outgoing and incoming Chinese passengers to and from China; that he is thoroughly reliable as a business man and is able to give abundant security for the faithful performance of any agency or duty he may undertake.

Names.	Number.	Street.
Bow Yuen Co	129	Second St.
Kwong Sang Wa & Co	143	Second St.
On Chong Wa & Co	140	Second St.
On Hing Co	66	Second St.
Kim Sun Low	61	Second St., upstairs.
Tie Hing Co	242	Alder St.
Chim Sang Tong	145	Second St.
Guen Wah & Co	247	Alder Street.
Hong Fook Tong	142	Second street.
Bow Lun Co	135	Second street.
Kwong Tai Co	129	Second street.
She Lee Wa	63	Second street.
Gim Wing Co	246	Alder St.
Sang Lung Co	245	Alder street.

Filed July 6, 1900.

E. D. McKEE, *Clerk.*

84 UNITED STATES OF AMERICA, *District of Oregon*, } ss:

I, E. D. McKee, clerk of the district court of the United States for the district of Oregon, do hereby certify that the foregoing pages, numbered from 3 to 83 inclusive, contain a full, true, and correct transcript of all the papers, exhibits, depositions and other proceedings, as the same appear of record and on file at my office and in my custody, in the matter of the application of Lee Lung, for a writ of *habeas corpus* as to Li Tom Shi and Li A Tsoi, his wife and child, in which proceeding said Lee Lung is appellant, and I. L. Patterson, United States collector of customs for the district of Willamette, is respondent.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at Portland, in said district, this 4th day of October, A. D. 1900.

[Seal United States District Court, Oregon.]

E. D. McKEE, *Clerk.*

Endorsed on cover: File No. 17,957. Oregon D. C. U. S. Term No. 189. Lee Lung, appellant, *vs.* I. L. Patterson, collector of customs for the port of Portland, Oregon. Filed November 3, 1900.